

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA
(WHEELING DIVISION)

ELECTRONICALLY
FILED
May 20 2022
U.S. DISTRICT COURT
Northern District of WV

KLUG BROTHERS, INC.,

Plaintiff,

v.

Case No. **5:22-CV-130 (Bailey)**

A. FOLINO CONSTRUCTION, INC.,

Defendant.

NOTICE OF REMOVAL

TO: Cheryl Dean Riley, Clerk
1225 Chapline Street
Wheeling, WV 26003

Defendant A. Folino Construction, Inc. hereby gives notice of removal of the action styled *Klug Brothers, Inc. v. A. Folino Construction, Inc.*, Civil Action No. 22-C-40, pending in the Circuit Court of Marshall County, West Virginia, to the United States District Court for the Northern District of West Virginia pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. The grounds for removal are as follows:

Diversity Jurisdiction

1. On April 18, 2022, Plaintiff Klug Brothers, Inc. filed the instant Complaint in the Circuit Court of Marshall County, West Virginia. The Complaint names as Defendant, A. Folino Construction. A copy of the Complaint and all filings in the Circuit Court are annexed hereto as Exhibit 1.

2. The Complaint brings one claim against the Defendant, based on Plaintiff's allegation that it is owed One Hundred Seventy Thousand Four Hundred Forty-Nine Dollars and Sixty-Six Cents (\$170,449.66) from Defendant.

3. The Complaint alleges that Plaintiff, Klug Brothers, Inc., is a West Virginia corporation with its principal place of business in West Virginia. Complaint at ¶1.

4. As the Complaint alleges, Defendant, A. Folino Construction, Inc., is a Pennsylvania corporation with its principal place of business in Pennsylvania. Complaint at ¶2.

5. As such, complete diversity exists between the Plaintiff and the Defendant. 28 U.S.C. § 1332(a) (2022). And since the amount in controversy, according to Plaintiff's Complaint, exceeds Seventy Five Thousand Dollars, the matter is properly removable under 28 U.S.C. § 1332 (2022).

Procedural Requirements

6. This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), in that the Complaint was filed on April 18, 2022, and the Complaint was served on Defendant on or about April 20, 2022. As such, this Notice of Removal is being filed within thirty (30) days of April 20, 2022.

7. Removal is proper to the United States District Court for the Northern District of West Virginia, Wheeling Division, because the Circuit Court of Marshall County, where the Complaint was filed, is located within the Northern District of West Virginia, Wheeling Division. 28 U.S.C. § 129(a); *L. R. Gen. P.* 77.02.

8. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served in the state court action are attached collectively as Exhibit 1. A certified copy of the docket sheet is attached as Exhibit 2.

9. Defendant reserves the right to amend or supplement this Notice of Removal or to present additional arguments in support of its entitlement to remove this case.

10. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Circuit Court of Marshall County, West Virginia. A copy of the Notice of Filing of the Notice of Removal is attached as Exhibit 3.

WHEREFORE, Defendant, A. Folino Construction, Inc., hereby removes this action from the Circuit Court of Marshall County and request that this action proceed as properly removed to this Court.

Respectfully submitted,

A. FOLINO CONSTRUCTION, INC.
By Counsel

/s/ Jacob A. Manning
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Defendant.

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing **Notice of Removal** was served upon all parties via the CM/ECF Court System on this the 20th day of May 2022 and was served upon the following via United States mail, postage prepaid:

Andrew R. Thalman, Esq.
PHILLIPS, GARDILL, KAISER & ALTMAYER, PLLC
61 Fourteenth Street
Wheeling, WV 26003

/s/ Jacob A. Manning
Jacob A. Manning (WV State Bar #9694)